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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-fifth session

SUMMARY RECORD OF THE 591st MEETING

Held at the Vienna International Centre, Vienna,
on Wednesday, 20 March 1996, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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The meeting was called to order at 10.15 a.m.

GENERAL EXCHANGE OF VIEWS *(continued)*

1. **Mr. SURYOKUSUMO** (Indonesia) said that his delegation had no objection to the fact that the working group on agenda item 3, relating to nuclear power sources, would not be reconvened at the present session. It agreed in principle to the shortening of the current session to two weeks unless the Subcommittee decided otherwise in the light of the inclusion of new substantive items in its agenda.

2. With respect to the possibility of convening a third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III) before the turn of the century, he reminded the Subcommittee that his delegation's proposal that such a conference should be convened in 1998 had received support at the thirty-third session of the Scientific and Technical Subcommittee. Indonesia believed that UNISPACE III, as well as considering the political and technical aspects of the advancement and application of space science and technology, including international cooperation, might examine certain legal aspects of outer space activities, through a review of the status of outer space law and the need for its further progressive development and codification. The conference might find ways of promoting wider adherence to existing international space treaties, including links between outer space law and other branches of international law such as environmental law. His delegation hoped that the work of the Legal Subcommittee at its present session would help towards that of UNISPACE III.

3. At its previous session, in dealing with the subject of outer space benefits, the Legal Subcommittee had thoroughly discussed two working papers (A/AC.105/C.2/L.182/Rev.2 and A/AC.105/C.2/L.197). The informal working paper prepared by the chairman of the relevant working group as a result of that discussion (A/AC.105/607, annex II, appendix) constituted, in his delegation's view, a suitable basis for the future discussion of the subject. The paper might well accommodate the interests of all States in ensuring cooperation in both the application and the development of outer space technology.

4. His delegation commended the questionnaire on aerospace objects (A/AC.105/607, annex I, appendix) for its usefulness and suggested that the Subcommittee should allow States that had not yet replied to the questionnaire the opportunity to do so in time for its next session.

5. **Mr. AZUMA** (Japan) recalled that the Subcommittee had been requested by the General Assembly, in resolution 50/27, to review its requirement for summary records and see whether it might be possible to utilize unedited transcripts at subsequent sessions. His delegation took the view that the cost of such records should be kept to the minimum, bearing in mind present financial constraints and the efficiency review being conducted by the Secretariat.

6. His delegation welcomed the rescheduling of the current session in accordance with the recommendations on working methods made at the previous session and it hoped that consideration would be given to other possibilities for improving the efficiency of the Subcommittee's work.

7. **Miss OTMANI** (Morocco) considered it useful that the Subcommittee was again having a general exchange of views. In connection with agenda item 4, definition and delimitation of outer space, she welcomed the step which had been taken of circulating a questionnaire on possible legal issues with respect to aerospace objects. The replies so far received and the relevant working group's discussions on the subject

had already resulted in modest progress, but in her view replies from the major space Powers were needed before any real step forward was possible.

8. The new Colombian working paper on the utilization of the geostationary satellite orbit (A/AC.105/C.2/L.200 and Corr.1) was a very constructive contribution to the Subcommittee's work and, together with the report of the International Telecommunication Union (A/AC.105/634), should enable it to make good progress in examining the issue. Her delegation was among those which believed that the geostationary orbit, as a limited natural resource, must be used equitably, with account being taken of the present and future needs of the developing countries. The application of the principle of exploring and utilizing outer space for the benefit and in the interests of all States was one of the Subcommittee's major concerns. Access to space technology was beneficial to all countries, particularly the developing ones, but in their case it was hampered by lack of funds. A flexible general legal framework, adaptable to the circumstances of different countries, was therefore needed for international cooperation in the peaceful uses of outer space. The holding of a third United Nations Conference on the Exploration and Peaceful Uses of Outer Space would be a major step in promoting such cooperation and had her delegation's strong support.

9. At its previous session the Subcommittee had considered two texts on outer space benefits (A/AC.105/C.2/L.182/Rev.2 and A/AC.105/C.2/L.197) setting forth divergent viewpoints. Many delegations, including her own, had called for a single document consolidating the points they had in common and providing a basis of discussion for the relevant working group at the current session.

10. With regard to working methods, she considered it reasonable to shorten the Subcommittee's session generally to two weeks instead of three, without prejudice to the possibility of thorough discussion of the items on its agenda.

11. **Mr. TRAUTTMANSDORFF** (Austria) said his delegation had accepted the reduction of the length of the Subcommittee's current session from three weeks to two on the understanding that the time available would be used in the best possible manner, and also in view of the need to improve the cost-effectiveness of meetings at a time when the United Nations was suffering a very serious financial crisis. However, steps of that kind should not divert attention from the importance of international encounters of global concern on subjects such as space law. Regrettably, the progressive development and codification of international law had reached stalemate. That situation had to be overcome. All too often the subjects discussed were too broad, leading some delegations to adopt general positions that reflected national interests and preventing others from taking a clear stance because they did not wish to prejudice their position on a subject whose scope could not be fully assessed. The dilemma was exemplified by the Subcommittee's unending debate on item 4, concerning the delimitation of outer space — a debate which was unlikely to result in codification in the near future on the basis of the rather general questionnaire which had been circulated.

12. That led him to suggest that the Working Group on Delimitation might usefully redefine its aims. Few delegations considered it wise to seek a general dividing-line between outer space and airspace and between space objects and other flight objects. Many believed in the need for a more functional approach that concentrated on defining the limits of the applicability of aerospace law and aviation law to space objects, which might simply be defined as objects that left and partially re-entered airspace.

13. The substantive capabilities of the Secretariat might be employed to suggest ways in which the Subcommittee could sharpen the focus of its work with a view to producing legal texts for submission in the very near future to its parent body, and thus to the General Assembly. The Secretariat might also be asked

to help bring the rich experience of space agencies, scientific organizations and other governmental and non-governmental organizations to bear on the Subcommittee's work.

14. Higher priority must be accorded to making legal solutions to space problems acceptable to the key players involved, without which international instruments on space law would be useless. Accordingly, the issues considered in the Subcommittee should be limited in scope and easily recognizable. His delegation would make proposals in that connection in the Subcommittee's working groups. It was important, in a period of extreme austerity, to avoid the criticism that the Subcommittee was wasting time by discussing how to go about its work. All the same, a debate on restructuring agenda item 4, on delimitation, and agenda item 5, on outer space benefits, in order to increase the Subcommittee's effectiveness might well prove useful.

15. **Mr. FASAN** (International Astronautical Federation) explained that the Federation was a non-governmental association of national bodies concerned with space activities, comprising 123 member organizations in 39 countries. Its aims were to foster the development of astronautics for peaceful purposes, promote the dissemination of technical information, stimulate public interest in space flight and encourage astronomical research. Its forty-seventh Congress, on the theme "Enlarging the scope of space applications", would be held in October 1996 in Beijing. During the Congress the Federation, in conjunction with the United Nations, would hold a workshop for participants from developing countries focusing on space technology and applications in the developing world.

16. The Federation cooperated closely with the Committee on the Peaceful Uses of Outer Space and its subsidiary bodies. Its annual publication *Highlights in Space*, prepared for the Committee, described progress in space science and research and contained a section on progress in international cooperation and space law which would be of particular interest to the Subcommittee. The Federation also organized symposia on the occasion of the sessions of the Scientific and Technical Subcommittee.

17. In order to promote the study and development of space law the Federation, in 1960, had founded the International Institute of Space Law (IISL), which maintained close ties with the Legal Subcommittee. The work of the latter, its parent Committee and the Scientific and Technical Committee had made it possible to integrate space science and technology into the legal aspects of humanity's space activities. The work of those bodies in building on the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and in elaborating other legal instruments and principles, had made space law an important branch of general international law.

18. Each year IISL organized a symposium on a particular aspect of space law to coincide with the session of the Legal Subcommittee. The 1996 Symposium, on protection of the space environment, had been held in cooperation with the European Centre for Space Law. The Institute had over 400 individual members from 42 countries. In 1996 its annual colloquium on the law of outer space would take place in Beijing and deal with the legal status of property rights on the moon and other celestial bodies, cases and methods of dispute settlement in space law, legal aspects of sharing benefits from the conduct of space activities, and other legal subjects related to the peaceful uses of outer space.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (*continued*) (A/AC.105/607 and Corr.1, A/AC.105/635, A/AC.105/637; A/50/20)

19. **Mr. ZVEDRE** (Russian Federation) said that the questionnaire on possible legal issues with regard to aerospace objects (A/AC.105/607, annex I, appendix) would enable a new approach to be taken to the matter of delimitation and possible solutions to be considered. Although at present there were not enough replies for any conclusions to be reached, it was to be hoped that by the thirty-sixth session of the Subcommittee the majority of States would have submitted replies.

20. The development of space technology required solutions to a number of interconnected questions relating to the applicability of international air law and international space law. It had to be decided which of the two regimes should apply to new means of transport, such as aerospace objects, whether they could realistically be covered by additional legal norms, and whether they required special regulations. In operating aerospace objects there were two key problems: defining their international legal status and regulating their flights in the various spaces through which they passed. It was not really possible to develop a special legal status applicable to all the objects and systems concerned, because of their great dissimilarities; it was more realistic to choose a legal status based on certain aspects, such as the capability of the aerospace object to travel through outer space and to remain in airspace for a certain period of time, and the technical design and nature of the object or system, for example whether it was single- or multi-staged, piloted or unpiloted, and launched vertically or horizontally. The first generation of aerospace objects, undertaking "shuttle" activities between Earth and orbit and achieving velocities of the first cosmic level, were categorized as space objects and deemed to be subject to space law. The question then arose whether other types of aerospace objects, operating on an Earth-to-Earth mission and at velocities lower than the first cosmic level, chiefly in the atmosphere, should be categorized as aircraft and subject to air law. The use of functional criteria of that kind was an acceptable way of proceeding, but conclusions on the subject would be possible only after careful legal analysis and after dealing with such matters as the flight of objects through the airspace of foreign States and responsibility for damage. There was much less clarity in regard to multipurpose systems comprising various components, such as an aerospace object carried by an aircraft.

21. The status of aerospace objects on Earth-to-orbit missions could be determined by reference to the regime of their flight at various stages of their trajectories; when in space they had to be categorized as space objects and were subject to international and national space law, but international space law was applicable to space objects both in space and in other environments. It was necessary to decide whether an aerospace object was to be categorized as a space object when it was in airspace on its way to its orbit or on its return from space. Aerospace objects returning from space were able, more or less freely, to travel in airspace and land horizontally like ordinary aircraft; because of that characteristic it was impossible to draw a complete analogy between their return to Earth and that of an ordinary space object. With classic space objects, States raised no objections to their innocent flight through their airspace, but their attitudes to the flights of foreign aerospace objects through their airspace in the future, and particularly if they landed on their territory without prior approval, might be quite different. Special agreement on such issues might be needed between the interested States.

22. In the event of damage resulting from collisions between aerospace objects and ordinary aircraft, it would seem logical to apply the norms of international space law to the responsibility of the launching State because that would serve as an additional stimulus for States and operating bodies to guarantee strict safety precautions.

23. The idea should not be ruled out that two separate legal regimes might apply to aerospace systems at two different points in their flight. From the launch to the second stage, the system could be regarded as an aircraft, and a State would have to seek prior permission before its aerospace object was able to undertake an innocent flight through the airspace of another country; in fact, the system would be subject to all the requirements of air law. After separation, the carrier aircraft would remain subject to air law, while the aerospace object and crew would enter the jurisdiction of space law for all subsequent stages of the flight until the moment of landing. Special agreements might be needed on that subject in the future, particularly in cases where aerospace objects were launched from airspace. The concept of the launching State had to be given further consideration in light of possible future launching means: a State authorizing the launch of a foreign object from its own airspace was automatically regarded as one of the launching States, with corresponding international obligations, and the question arose whether a State from whose airspace a foreign aerospace object was launched could demand compensation under the Liability Convention in the event of damage.

24. In the case of Earth-to-orbit objects flying through the airspace of foreign States, the two principles of freedom to utilize space and sovereignty of States over their own airspace had to be reconciled. The key question was whether, applying the principle of free utilization of space, the consequence was the principle of free access to space; in other words, to what extent could States using aerospace objects of the Earth-to-orbit type engage in unhindered flight through the airspace of other States? An analogy might be thought to exist between access of aerospace objects to space and access of vessels to the open sea through the territorial waters of sovereign States, but the question arose whether such through-flight should become a norm of international law or the subject of bilateral or regional agreements. Determination of the law regarding innocent through-flights would not do away with the need to settle the situation regarding the delimitation of space, since it was not clear to what altitude the regime governing innocent through-flight should extend. A further problem was to ensure the security of the flights of air transport and aerospace objects; that might entail developing an entire set of regulations covering the requirements both of aviation and of cosmonautics.

25. **Mr. ARIZAGA** (Ecuador) said that his Government's position was clear: it favoured a delimitation of airspace and outer space and the creation of a *sui generis* legal regime for the geostationary orbit. He welcomed the new working paper on the latter subject submitted by Colombia (A/AC.105/C.2/200 and Corr.1). The working paper and the replies to the questionnaire on possible legal issues with regard to aerospace objects (A/AC.105/635) would give a valuable impetus to the Subcommittee's discussions and should enable progress to be made. Outer space had to be delimited not only because of practical considerations but also because of the increasingly widely shared *opinio juris generalis* which legal doctrine recognized. His delegation was studying the questionnaire and hoped to be able to provide a detailed reply.

26. The concern which his country felt at the increase in space debris, especially in the geostationary orbit, was shared by a growing number of countries. Since space debris affected space navigation, telecommunications, future access and the security of States, it was a problem of particular importance, and one which the Subcommittee should examine at its thirty-sixth session. Particular aspects for consideration were the transfer of satellites to disposal orbits before the end of their useful life and the legal status and ownership of objects abandoned in space. Space law provided no specific norms to cover such a situation.

27. It was for the Legal Subcommittee to deal with all the legal and political aspects relating to the geostationary orbit, not the International Telecommunication Union, whose sphere of activity was limited to specific technical aspects. For geographical reasons Ecuador had demonstrated great interest in the geostationary orbit, which was a limited natural resource with special characteristics, and for which there should be a *sui generis* legal regime regulating access to and utilization of the orbit and guaranteeing equitable access to it, with account being taken of the relative disadvantages of the developing countries.

28. **Ms. VENTURINI** (Italy) said that no definition or delimitation of outer space currently existed in international customary law or could be expected to emerge. Although her own Government had replied to the questionnaire on the legal regime of aerospace objects, there were not yet enough replies for a productive debate on the subject. She therefore suggested that discussion of it be postponed until the next session, when the Subcommittee should be in a position to decide whether the questionnaire deserved further consideration. She commended the working paper submitted by Colombia (A/AC.105/C.2/L.200 and Corr.1) but she was still not convinced that there was a need for special principles concerning access to and use of the geostationary orbit. The International Telecommunication Union was dealing successfully with such matters, if further or new regulations were needed, they might be deemed to fall within the competence of the World Trade Organization, whose general agreements on trade in services incorporated an annex on telecommunications which applied to satellite services. Since access to and use of the geostationary orbit were matters that required a broad approach, the Subcommittee's involvement with it should not go beyond legal research and the dissemination of information.

29. **Mr. Ho-Jin LEE** (Republic of Korea) said that during the cold war period, the Committee on the Peaceful Uses of Outer space had prepared five international legal instruments and four sets of principles concerning outer space, but it was now stagnating. Yet there were urgent issues to address, such as the rapidly increasing need for space uses, the growing clamour for space benefits and the widening gap between advanced and developing countries with regard to space technology. The commercialism which pervaded space use militated against the orderly management of outer space activities under international auspices. The Committee should therefore play a much more active role in defining the principles at issue, at least in respect of the geostationary satellite orbit and space debris.

30. The question of the definition and delimitation of outer space had been on the Subcommittee's agenda for 30 years without any conclusion being reached. Outer space was universally regarded as the common heritage of mankind and its definition and delimitation would help to achieve the orderly management and rational utilization of that asset. His delegation strongly supported the initiative of the Russian Federation in obtaining the views of States on certain legal issues pertaining to aerospace objects by means of a questionnaire, the replies to which could provide a useful basis for the process of definition and delimitation. He urged States which had not yet replied to the questionnaire to do so as quickly as possible and he requested the Secretariat to provide a report analysing the replies. The definition and delimitation of outer space should be recognized as a practical problem which, with the advent of new aerospace systems, called for a new legal regime. For national security reasons the outer limit of sovereign airspace must be defined. An acceptable formula for that should be achievable given active cooperation from States with space exploration capabilities.

31. The geostationary orbit was a limited natural resource, and in the era of the information superhighway it had become much more valuable. It was time for the Subcommittee to adopt principles governing its use. At the recent session of the Scientific and Technical Subcommittee concern had been expressed that the orbit would soon become saturated through the growing number of satellites being launched on a competitive basis,

thus preventing non-discriminatory access. The working paper on that subject submitted by the delegation of Colombia (A/AC.105/C.2/L.200 and Corr.1) was a useful basis for discussion of the rational and equitable use of the orbit. He suggested that it should be formulated as a draft resolution, for ultimate adoption by the General Assembly, entitled "Draft principles governing the rational and equitable use of the geostationary orbit" and arranged in the same way as the existing four sets of outer space principles adopted by the General Assembly. In addition to dealing with matters such as purpose, application and criteria, the principles might specify that they should be applied by all bodies in the United Nations system, including the International Telecommunication Union, and they might set out provisions for dispute settlement.

32. The principles governing the geostationary orbit might be codified through joint work by the Legal Subcommittee and the International Law Commission, drawing on the negotiation process followed by the United Nations Conference on the Law of the Sea. As to the view that the Legal Subcommittee had no mandate to develop a legal regime for the orbit, the Committee on the Peaceful Uses of Other Space had been established by the General Assembly as a focal point for international political and legal discussions on outer space issues. The Committee, and especially its Legal Subcommittee, should pursue the task of codifying the rules of law governing outer space.

33. **Mr. KIM** (United States of America) said his delegation was still unconvinced that developing an artificial or arbitrary delineation of outer space would be a useful contribution to international law at the present time. No practical or legal problem had arisen from the want of a delimitation. The main legal issues which might arise from the exploration and use of outer space seemed capable of solution without resolving the question of delimitation. Moreover, there appeared to be no firm basis in science and technology for addressing the matter. In 1967, the Scientific and Technical Subcommittee had concluded that it was impossible to identify scientific or technical criteria permitting a precise definition or demarcation of outer space. That was still the case, particularly since technological progress had increased the height at which aircraft could sustain flight and had reduced the minimum altitude for orbital flight. He disagreed with the view of some States that State sovereignty could be safeguarded only through a definition or delimitation of outer space; space activities now in progress did not infringe the principles of State sovereignty and of outer space law. Efforts to establish positive legal norms should be pursued exclusively in the context of specific problems and with full consideration of the scientific, technical, legal and other circumstances involved. To attempt a demarcation would stir up unnecessary difficulty. He therefore urged the Subcommittee to reconsider the inclusion of the topic on its agenda.

34. With respect to the geostationary orbit, his delegation took the view that the orbit was in outer space and that its use was therefore governed by the provisions of the Outer Space Treaty. Claims of sovereignty over the geostationary orbit were misplaced; the repeated use of an orbital position in the geostationary orbit did not mean that a State had appropriated that position or was claiming sovereignty over it. However, his Government shared the concern that all States should have equitable access to the geostationary orbit, especially in the area of telecommunications. International management of the geostationary orbit was looked after by the International Telecommunication Union, which dealt with detailed questions relating to equitable access to the frequencies and services available in the orbit. It was therefore unnecessary for the Subcommittee to play a part in that activity.

35. His delegation continued to have doubts about the objectives of the questionnaire on possible legal issues with regard to aerospace objects (A/AC.105/607, annex I, appendix), especially where the questions related to the application of aviation law to space vehicles and the existence of customary international law governing passage of a space vehicle through airspace upon re-entry into the Earth's atmosphere. There was

no practical need for new legal rules concerning space vehicles at present, and work on such a regime would raise more problems than it might solve. No incidents concerning space objects had arisen to require the Subcommittee's attention. The question of space objects, including the space shuttle, was governed by the 1967 Outer Space Treaty. Moreover, a number of space vehicles were still in the development stage, and any legal standards that were framed to apply to them should be developed in a specific context. Consensus would be difficult to achieve on the question of rights of passage through airspace and prior notification of States with regard to such passage, and those issues would inevitably be addressed in elaborating any legal regime on aerospace objects.

36. **Mr. VAUNGVIVAT** (Observer for Thailand) said that for the most part the new working paper submitted by the delegation of Colombia (A/AC.105/C.2/L.200 and Corr.1) was acceptable to his delegation. There was general agreement on the principle, expressed in article 44 of the Constitution of the International Telecommunication Union (ITU), that the geostationary orbit was a limited natural resource which must be used rationally, efficiently and economically. Section III of the working paper reflected the fact that increasing demand had led to competition for access to a specific orbital position by more than one country at the same time and with the use of the same frequencies. The paper drew a distinction between access to planned and to unplanned bands and services. Access to the latter was governed by the principle of "first come, first served", which was vague and prone to misinterpretation: States with major space capacities tended to believe that where claims overlapped, the State which launched its satellite first had priority. That was not the meaning of the principle. The mandate of the Subcommittee, according to General Assembly resolution 50/27, was to find ways and means of ensuring the rational and equitable use of the geostationary orbit without prejudice to the role of ITU. The rules governing overlapping claims by conflicting parties were not necessarily those of ITU; there were weak points in ITU's coordination procedures, notably the lack of compulsory dispute settlement arrangements. To avoid misinterpretation, the "first come, first served" principle should be spelt out, with account being taken of equitable principles, the geographical situation of the equatorial nations and optimization of the benefits derived from the use of the geostationary orbit, so as to guarantee equal access to space by all nations.

37. **Mr. FIUZA NETO** (Brazil) congratulated the delegation of Colombia on its new working paper, which offered a fresh basis for work on the definition and delimitation of outer space. Recent progress on the question had been rather slow, in spite of the gains achieved in previous years.

38. **Mr. HUANG Huikang** (China) said that the new working paper represented a substantial modification of the Colombian delegation's earlier document (A/AC.105/C.2/L.192) and reflected the concerns expressed by various delegations, including his own. In formulating it the delegation of Colombia had demonstrated a spirit of cooperation and comprehension which augured well for a final solution to the problem of the geostationary orbit. The paper should serve as a basis for the Subcommittee's endeavours to achieve that solution.

The meeting rose at 12.05 p.m.